App. 1

[Filed December 22, 1994]

IN THE
SUPREME COURT OF ILLINOIS

Docket No. 76945—Agenda 27—September 1994.
MICHAEL BARGER *et al.*, Appellees, v.
HOWARD PETERS III, Director of Corrections, Appellant.

JUSTICE FREEMAN delivered the opinion of the court:

The question in this case is whether Public Act 88-311, which excludes inmates from the opportunity to increase good-conduct credit, violates the *ex post facto* clauses of the Federal and Illinois Constitutions (U.S. Const., art. I, §10; Ill. Const. 1970, art. I, §16). We hold that it does.

BACKGROUND

As of September 10, 1990, section 3-6-3 of the Unified Code of Corrections applied a multiplier to increase the "day for a day" credit certain prisoners could earn toward early release. (Ill. Rev. Stat. 1991, ch. 38, par. 1003-6-3 (amended by Pub. Act 86-1373, eff. September 10, 1990).) Inmates engaged in Department of Corrections educational programs who met specified goals were eligible to receive credit increased by a factor of 1.25. (Ill. Rev. Stat. 1991, ch. 38, par. 1003-6-3.) The multiplier was not available for those convicted of first or second degree murder or those convicted of a Class X felony. (Ill. Rev. Stat. 1991, ch. 38, par. 1003-6-3.) Nor was it available for inmates who were convicted of a felony while engaged in the programs. Ill. Rev. Stat. 1991, ch. 38, par. 1003-6-3.

Public Act 88-311, effective August 11, 1993, amended section 3-6-3. (Pub. Act 88-311, eff. August 11, 1993 (amend-

ing Ill. Rev. Stat. 1991, ch. 38, par. 1003-6-3).) Among the changes, the act precluded application of the multiplier to categories of inmates previously eligible for it under section 3-6-3. (Pub. Act 88-311, eff. August 11, 1993 (amending Ill. Rev. Stat. 1991, ch. 38, par. 1003-6-3).) Pertinent here, the act rendered ineligible for the multiplier inmates convicted of criminal sexual assault, felony criminal sexual abuse, and aggravated criminal sexual abuse, and aggravated battery with a firearm, as well as related inchoate offenses. Pub. Act 88-311, eff. August 11, 1993 (amending Ill. Rev. Stat. 1991, ch. 38, par. 1003-6-3).

Pursuant to a certified class action, the circuit court of Cook County ruled that Public Act 88-311 violates *ex post facto* prohibitions. The suit had been brought by Michael Barger and Richard Maez, convicted, respectively, of criminal sexual assault and attempted armed robbery. Barger and Maez represented inmates whose crimes and convictions fell between September 10, 1990, the effective date of Public Act 86-1373, and August 11, 1993, the effective date of Public Act 88-311, making them ineligible for increased credit. Finding Public Act 88-311 unconstitutional, the circuit court permanently enjoined the Department of Corrections from applying it to the plaintiff class.

The matter lies here on direct appeal (134 Ill. 2d R. 302).

DISCUSSION

The Federal Constitution prohibits States from enacting any *ex post facto* law. (U.S. Const., art. I, §10.) Although that limitation renders it unnecessary, the same protection historically has been included in this State's constitutions. (Ill. Const. 1970, art. I, §16; Ill. Const. 1870, art. II, §14; Ill. Const. 1848, art. XIII, §17; Ill. Const. 1818, art. VIII, §16; F. Grad, *The State Bill of Rights*, in Con-

Con, Issues for the Illinois Constitutional Convention 44 (V. Ranney ed. 1970); G. Braden & R. Cohn, The Illinois Constitution: An Annotated and Comparative Analysis 75 (1969).) It has been suggested that there is, nevertheless, some utility in the provisions' coexistence, the thought being that the prohibitions, together, lend greater assurance of the constitutional protection than the Federal clause alone. G. Braden & R. Cohn, The Illinois Constitution: An Annotated and Comparative Analysis 75 (1969).

But the drafters of our modern constitution intended the Illinois *ex post facto* clause to do no more than conform to the Federal Constitution's general prohibition on the States. (3 Record of Proceedings, Sixth Illinois Constitutional Convention 1476; 6 Committee Proposals, Sixth Illinois Constitutional Convention 55.) Thus, in construing this State's constitutional provision, we are without a basis to depart from the Supreme Court's construction of the Federal *ex post facto* clause. (See *People v. Tisler* (1984), 103 Ill. 2d 226, 243-45.) And, in fact, this court has long interpreted our own constitutional provision in step with Supreme Court pronouncements. See, *e.g.*, *People v. Ramey* (1992), 152 Ill. 2d 41, 63-64.

In *Weaver v. Graham* (1981), 450 U.S. 24, 67 L. Ed. 2d 17, 101 S. Ct. 960, the Supreme Court used an expansive interpretation of the *ex post facto* clause to strike down a Florida statute which reduced "gain-time" credit earned for avoiding disciplinary infractions and performing assigned tasks. Such legislation, the Court explained, could be constitutionally applied retrospectively only if it did not work to a prisoner's "detriment." (*Weaver*, 450 U.S. at 33, 67 L. Ed. 2d at 25, 101 S. Ct. at 966.) Because the statute "change[d] 'the quantum of punishment' " for prisoners who committed crimes before its enactment, it was disadvantageous with respect to them. (*Weaver*, 450

U.S. at 33, 67 L. Ed. 2d at 25, 101 S. Ct. at 966, quoting *Dobbert v. Florida* (1977), 432 U.S. 282, 293-94, 53 L. Ed. 2d 344, 356, 97 S. Ct. 2290, 2298.) The disadvantage: constricting the opportunity to earn early release effectively "lengthen[ed]" the period of actual incarceration, making more onerous the punishment for already committed crimes. *Weaver*, 450 U.S. at 33-34, 67 L. Ed. 2d at 26, 101 S. Ct. at 966-67.

This court, in *Tiller v. Klincar* (1990), 138 Ill. 2d 1, used the same interpretation of the *ex post facto* prohibition to invalidate legislation curtailing the frequency of parole hearings which had been previously mandated every year. The "possibility of parole," the court noted, "is an element of the punishment annexed to any crime." (*Tiller*, 138 Ill. 2d at 11.) Thus, in lengthening the period between parole hearings, the legislation eliminated the opportunity for earlier release to the disadvantage of those already incarcerated. *Tiller*, 138 Ill. 2d at 11-12.

The notion that the *ex post facto* prohibition nullifies any law which " 'alters the situation of a party to his disadvantage' " (emphasis omitted) was established in *Kring v. Missouri* (1883), 107 U.S. 221, 228-29, 27 L. Ed. 506, 509, 2 S. Ct. 443, 449, quoting *United States v. Hall* (D. Pa. 1809), 26 F. Cas. 84, 86 (No. 15,285). But, in *Collins v. Youngblood* (1990), 497 U.S. 37, 48-49, 111 L. Ed. 2d 30, 42-43, 110 S. Ct. 2715, 2722, the Supreme Court overruled *Kring*, holding that the quoted language indicated an unjustified expansion of the *ex post facto* prohibition beyond the categories of laws the Framers intended to come within the clause's ambit.

Those categories were established in *Calder v. Bull* (1798), 3 U.S. (3 Dall.) 386, 1 L. Ed. 648, shortly after ratification of the Constitution. They included, as is relevant here, "[e]very law that *changes the punishment*, and

inflicts a *greater punishment*, than the law annexed to the crime, when committed." (Emphasis in original.) (*Calder*, 3 U.S. (3 Dall.) at 390, 1 L. Ed. 650.) Summarized differently, such a law would be one "which makes more burdensome the punishment for a crime[ ] after its commission." (*Beazell v. Ohio* (1925), 269 U.S. 167, 169-70, 70 L. Ed. 216, 217, 46 S. Ct. 68, 68.) If the law does not so affect the punishment associated with a crime, it is of no moment that the law may work to a prisoner's disadvantage. See *Collins*, 497 U.S. at 48, 111 L. Ed. 2d at 42-43, 110 S. Ct. at 2722.

The question here then becomes whether elimination of an opportunity to increase good-conduct credit is a change in the punishment associated with a crime or results in the infliction of greater punishment. In the wake of *Collins*, that question is not to be answered against what disadvantage may be visited upon the plaintiff class through elimination of the opportunity for early release. But because *Collins* otherwise left unaffected the Court's holding in *Weaver* and, by implication, this court's decision in *Tiller*, the question ultimately turns on the meaning the Court ascribes to the term "punishment."

The Supreme Court does not view punishment for *ex post facto* clause purposes to mean simply the period of incarceration prescribed by a judge for a person convicted of a crime—that is, the sentence. Instead, the Court construes punishment to mean the actual time that such a person spends in prison. The Florida statute invalidated in *Weaver* did not affect, retrospectively, the sentence imposed on any inmate. The " 'quantum of punishment' " affected was nothing but the time for which an inmate was actually incarcerated under the sentence imposed. Generally, then, any legislation curtailing the possibility of reducing actual prison time makes more onerous the

consequence associated with a crime. It is entirely inconsequential that capitalizing on the opportunity may depend on an inmate's success in staying out of trouble or attaining other goals.

Public Act 88-311 does not change the prescribed period of incarceration imposed for the crimes committed by members of the plaintiff class. If understanding the consequence associated with a crime was limited by the more common notion of equating punishment with sentence, the act would comport with the constitutional clauses. But when the consequence associated with a crime is viewed in the manner indicated by the Supreme Court in *Weaver*, the act does, indeed, make more burdensome the punishment associated with certain crimes already committed.

We must, as in *Tiller*, apply that more generous understanding of punishment here. Public Act 88-311 curtails the opportunity for an earlier release as permitted under section 3-6-3 in its form as existed between September 10, 1990, and August 11, 1993. Public Act 88-311 curtails the opportunity for an earlier release as permitted under section 3-6-3 in its form as existed between September 10, 1990, and August 11, 1993, and so makes more burdensome the punishment associated with the crimes of the plaintiff class. The class consists of inmates who were eligible as of September 10, 1990, to enhance their good-conduct credit by a factor of 1.25 under section 3-6-3 but who were, as of August 11, 1993, deprived of that opportunity by Public Act 88-311. As to that class, Public Act 88-311 violates the *ex post facto* prohibitions of the Federal and Illinois Constitutions.

We therefore affirm the permanent injunction entered by the circuit court. The injunction precludes application of Public Act 88-311 "to persons who committed the of-

fenses for which they were convicted on and after September 10, 1990[,] to and including August 10, 1993, were committed to the Illinois Department of Corrections, and were or would have been eligible on August 10, 1993[,] for the 1.25 enhanced educational good conduct credit" under section 3-6-3 as unamended by Public Act 88-311.

Affirmed.

JUSTICE HEIPLE, dissenting:

When the instant criminal plaintiffs were sentenced for their crimes, section 3-6-3 of the Unified Code of Corrections provided that certain prisoners were eligible to earn credits toward early release through their participation in prison educational programs. (730 ILCS 5/3-6-3(a)(4) (West 1992).) Then, in 1993, Public Act 88-311 became effective, which modified the Unified Code of Corrections so that certain categories of prisoners were no longer eligible to earn any additional education credits. The plaintiffs' resulting class action suit alleged, and the majority has found, that Public Act 88-311 constitutes an impermissible *ex post facto* law in that it makes more burdensome the punishment of their crimes. I dissent.

Prior to the Supreme Court's decision in *Collins v. Youngblood* (1990), 497 U.S. 37, 50, 111 L. Ed. 2d 30, 44, 110 S. Ct. 2715, 2723, *ex post facto* jurisprudence in the United States had devolved into finding a violation wherever a law retroactively worked a disadvantage on a prisoner. Essentially, the majority employs this outdated, broader approach in finding that Public Act 88-311 is an *ex post facto* law unconstitutionally disadvantaging the instant plaintiffs.

In *Collins*, however, the Supreme Court returned *ex post facto* jurisprudence to its rightful roots by reaffirm-

ing the definition delivered by Justice Chase in *Calder v. Bull*. (*Collins*, 497 U.S. at 50, 111 L. Ed. 2d at 44, 110 S. Ct. at 2723, citing *Calder v. Bull* (1798), 3 U.S. (Dall.) 386, 1 L. Ed. 648.) *Calder* held, in pertinent part, that an *ex post facto* violation occurs only where a retroactive law "changes the punishment, and inflicts a greater punishment, *than the law annexed to the crime, when committed.*" (Emphasis added.) *Calder*, 3 U.S. at 390, 1 L. Ed. at 650.

The majority errs in its application of the *Calder* definition by focusing solely on the meaning of the term "punishment." It finds that Public Act 88-311 inflicts a greater punishment in that it curtails the possibility of reducing the plaintiffs' actual prison time. What the majority ignores, however, is the threshold requirement that the law at issue constitute a change in the punishment "annexed to the crime, when committed." *Calder*, 3 U.S. at 390, 1 L. Ed. at 650.

The dangers inherent in ignoring this requirement become clear upon considering the absurd conclusions to which it logically leads. Consider section 3-6-3(a)(3) of the Unified Code of Corrections (730 ILCS 5/3-6-3(a)(3) (West 1992)), which gives prison officials the discretion to grant an additional 180 days of good-conduct credit for meritorious conduct. Accepting the majority's rationale, if, at the time of the crime, good-conduct credit could be earned by a prisoner for cleaning prison latrines, then the subsequent assignment of such services to an employed janitor might arguably be deemed a violation of the prisoner's rights. More directly to the point, however, the majority's approach improvidently raises both equal protection and *ex post facto* questions as to the thousands of prisoners who are currently on the waiting lists for educational programs.

At the time Public Act 88-311 was enacted, there were in excess of 4,000 prisoners on waiting lists for educational programs. (See 88th Ill. Gen. Assem., Senate Proceedings, April 16, 1993, at 1 (comments of Senator Hawkinson).) As of November 1, 1994, some 4,992 inmates remained on educational program waiting lists. Doubtless, many of these prisoners will have served their prison terms without ever being offered participation in educational programs.

It should be recognized that the amendments contained in Public Act 88-311 can only constitute an *ex post facto* law if the pre-amendment provisions constituted a law annexed to the plaintiffs' crimes when committed. In determining whether a law is annexed to a crime when committed, it is appropriate to note that, by including the *ex post facto* prohibition in the Constitution, the Framers sought to "assure that legislative Acts give fair warning of their effect and permit individuals to rely on their meaning until explicitly changed." (*Weaver v. Graham* (1981), 450 U.S. 24, 28-29, 67 L. Ed. 2d 17, 23, 101 S. Ct. 960, 964.) In other words, the *ex post facto* clause ensures that a criminal knows in advance the consequences of his crime.

These consequences, of course, include the sentence that a criminal can expect under the law. In Illinois, for example, criminals understand that, except for certain proscribed offenders, the sentence imposed by a trial judge will automatically be reduced by their good behavior while in prison. (730 ILCS 5/3-6-3(a)(2) (West 1992).) Such automatic credit for good behavior is a law annexed to the crime when committed because, *inter alia*, this guaranteed "eligibility for reduced imprisonment is a significant factor entering into both the defendant's decision to plea bargain and the judge's calculation of the sentence to be im-

posed." *Weaver*, 450 U.S. at 32, 67 L. Ed. 2d at 25, 101 S. Ct. at 966.

This is not the case, however, regarding enhanced credit for participation in educational programs. Unlike automatic credit for good behavior, the possibility of earning educational credit in Illinois has always been uncertain. It depends upon the vagaries of State funding, the prison that an inmate is randomly assigned to, and even upon the innate abilities of a given prisoner.

The arbitrary and uncertain availability of the educational programs precludes any suggestion that criminals anticipate that their sentences will be reduced if they choose to participate in educational programs. For, choose though they might, their desires are likely to be frustrated by the unavailability of such programs. Consequently, unlike automatic good-conduct credit, the law making these educational programs available does not constitute a law annexed to the crime when committed.

Insofar as the availability of educational participation credits could not have been depended upon when the plaintiffs committed their crimes, Public Act 88-311, which only modifies the availability of the educational classes, is not an *ex post facto* law. Any disadvantages caused by Public Act 88-311 are thus constitutionally irrelevant.

For the foregoing reasons, I respectfully dissent from the majority opinion.

JUSTICE NICKELS joins in this dissent.

[Entered January 27, 1994]

IN THE
CIRCUIT COURT OF COOK COUNTY, ILLINOIS

MICHAEL BARGER, et al.,

Plaintiffs,

v. No. 93 CH 10462

HOWARD PETERS,

Defendant.

ORDER

This cause coming to be heard on defendant's motion to dismiss, the parties having given argument and filed written responses and the Court being fully advised in the premises.

IT IS HEREBY ORDERED THAT:

1. Defendants motion to dismiss is denied;

2. Plaintiffs' motion for preliminary injunction, Allowed to be Amended to a motion for permanent injunction is granted, and defendants motion for stay pending appeal is granted;

3. Plaintiff's oral motion for judgment on the pleadings is granted.

ENTER: T. O'Brien, Judge

[Entered February 8, 1994]

IN THE
CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

MICHAEL BARGER and RICHARD MAEZ, individually and on behalf of all others similarly situated,

Plaintiffs,

v. No. 93 CH 10462

HOWARD A. PETERS, III, Director, Illinois Department of Corrections, in his official capacity,

Defendant.

ORDER

This matter having come before the Court on Plaintiff's Motion for Class Certification (pursuant to 735 ILCS § 5/2-801 (1993)); Counsel for the Parties being present; and the Court being fully advised;

IT IS HEREBY ORDERED THAT:

1. Defendant having raised no objections, the Court finds that the prerequisites for the maintenance of a class action set forth in 735 ILCS § 5/2-801—numerosity; common questions of fact or law which predominate over any questions affecting only individual class members; representative parties will fairly and adequately protect the interest of the class; and class action is an appropriate method for the fair and efficient adjudication of the case—have been met.

2. Accordingly, the Court certifies a class in this action consisting of:

All persons who: 1) committed offenses on or after September 10, 1990 to and including August 10, 1993, 2) have been or will be committed to the Illinois Department of Corrections, 3) were or would have been eligible on August 10, 1993 for the 1.25 enhanced educational good conduct credit under Pub. Act 86-1373 (730 ILCS 5/3-6-3(a)(4) (1993)), and 4) were rendered ineligible for enhanced educational good conduct credit under Pub. Act 88-311 (eff. August 11, 1993).

3. Plaintiffs are granted leave to amend their complaint so that the complaint's class description conforms to the above class description.

4. As to the named plaintiffs and members of the plaintiff class, the Court holds that Pub. Act 88-311 (eff. August 11, 1993) is unconstitutional as it applies to persons who committed the offenses for which they were convicted on and after September 10, 1990 to and including August 10, 1993, were committed to the Illinois Department of Corrections, and were or would have been eligible on August 10, 1993 for the 1.25 enhanced educational good conduct credit under Pub. Act 86-1373, for the reason that such application violates the *ex post facto* prohibitions of the United States (art. I, § 10) and Illinois (art. I, § 16) Constitutions.

5. The Court's permanent injunction, entered and stayed, pending appeal by defendant, on January 27, 1994, extends to the named plaintiffs and members of the plaintiff class as follows:

Defendant Peters is permanently enjoined from:

a) applying Pub. Act 88-311 (eff. Aug. 11, 1993) (1993 Ill. Leg. Serv. 2605) ("1993 Law") and the Rules defendant Peters promulgated thereunder—20 Ill. Admin. Code §§ 107.145 and 107.520 (eff. Sept. 17, 1993)—to the named plaintiffs and members of the

plaintiff class who: (i) were or would have been eligible to earn 1.25 enhanced educational good conduct credit pursuant to 730 ILCS 5/3-6-3(a)(4) (1993) (Pub. Act 86-1373, eff. Sept. 10, 1990, 1990 Ill. Laws 2844-46 (West)) ("1990 Law") and (ii) have been rendered ineligible to earn 1.25 enhanced educational good conduct credit pursuant to the 1993 Law;

b) failing to award enhanced educational good conduct credit to the named plaintiffs and members of the plaintiff class who: (i) were or would have been eligible to earn the 1.25 enhanced educational good conduct credit pursuant to the 1990 Law and (ii) have been rendered ineligible to earn the 1.25 enhanced educational good conduct credit pursuant to the 1990 Law; and

c) failing to release the named plaintiffs and class members on the date on which they would be released if awarded the 1.25 enhanced educational good conduct credit pursuant to the 1990 Law.

6. The issue of attorney's fees and costs is reserved. Plaintiffs are granted 28 days in which to file their motion.

7. This Order is a final and appealable Order. The Court expressly finds that there is no just cause for delay of enforcement or appeal of this Order or its Order of January 27, 1994.

ENTERED Thomas J. O'Brien, Judge, 1994

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CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

CONSTITUTION OF THE UNITED STATES
Art. 1, §10

Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws; and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

CONSTITUTION OF THE STATE OF ILLINOIS
Art. I, §16

§ 16. Ex Post Facto Laws and Impairing Contracts

No ex post facto law, or law impairing the obligation of contracts or making an irrevocable grant of special privileges or immunities, shall be passed.

PUBLIC ACT 88-311
(Senate Bill No. 956)

AN ACT in relation to criminal law, amending named Acts.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

* * * * *

Section 15. The Unified Code of Corrections is amended by changing Sections 3-2-2, 3-6-3, 5-8-1, 5-8-1.1, 5-8A-2, and 5-8A-3 as follows:

* * * * *

(730 ILCS 5/3-6-3) (from Ch. 38, par. 1003-6-3)
Sec. 3-6-3. Rules and Regulations for Early Release.

(a)(1) The Department of Corrections shall prescribe rules and regulations for the early release on account of good conduct of persons committed to the Department which shall be subject to review by the Prisoner Review Board.

(2) Such rules and regulations shall provide that the prisoner shall receive one day of good conduct credit for each day of service in prison other than where a sentence of "natural life" has been imposed. Each day of good conduct credit shall reduce by one day the inmate's period of incarceration set by the court.

(3) Such rules and regulations shall also provide that the Director may award up to 180 days additional good conduct credit for meritorious service in specific instances as the Director deems proper; except that the additional 90 days of good conduct credit for meritorious service provided by this amendatory Act of 1990 shall not be awarded to any prisoner who is serving a sentence for conviction of first degree murder, reckless homicide while under the influence of alcohol or any other drug, aggravated kidnapping, kidnapping, aggravated criminal sexual assault, criminal sexual assault, deviate sexual assault, aggravated criminal sexual abuse, aggravated indecent liberties with a child, indecent liberties with a child, child pornography, heinous battery, aggravated battery of a

spouse, aggravated battery of a spouse with a firearm, aggravated battery of a child, endangering the life or health of a child, cruelty to a child, or narcotic racketeering.

(4) Such rules and regulations shall also provide that the good conduct credit accumulated and retained under paragraph (2) of subsection (a) of this Section by any inmate during specific periods of time in which such inmate is engaged full-time in substance abuse programs, correctional industry assignments, or educational programs provided by the Department under this paragraph (4) and satisfactorily completes the assigned program as determined by the standards of the Department, shall be multiplied by a factor of 1.25 for program participation before the effective date of this amendatory Act of 1993 and 1.50 for program participation on or after that date. However, no inmate shall be eligible for the additional good conduct credit under this paragraph (4) while assigned to a boot camp, mental health unit, or electronic detention, or if convicted of first degree murder, a Class X felony, criminal sexual assault, felony criminal sexual abuse, aggravated criminal sexual abuse, aggravated battery with a firearm, or any predecessor or successor offenses with the same or substantially the same elements, or any inchoate offenses relating to the foregoing offenses. No inmate shall be eligible for the additional good conduct credit under this paragraph (4) who (i) has previously received increased good conduct credit under this paragraph (4) and has subsequently been convicted of a felony, or (ii) has previously served more than one prior sentence of imprisonment for a felony in an adult correctional facility.

Educational, vocational, substance abuse and correctional industry programs under which good conduct credit may be increased under this paragraph (4) shall be evaluated by the Department on the basis of documented standards. The Department shall report the results of these evaluations to the Governor and the General Assembly by September 30th of each year. The reports shall include data relating to the recidivism rate among program participants.

Availability of such programs shall be subject to the limits of fiscal resources appropriated by the General Assembly for such purpose. Eligible inmates who are denied immediate admission shall be placed on a waiting list under criteria established by the Department. The inability of any inmate to become engaged in any such programs by reason of insufficient program resources or for any other reason established under the rules and regulations of the Department shall not be deemed a cause of action under which the Department or any employee or agent of the Department shall be liable for damages to the inmate.

(5) Whenever the Department is to release any inmate earlier than it otherwise would because of a grant of good conduct credit for meritorious service given at any time during the term, the Department shall give reasonable advance notice of such impending release to the State's attorney of the county where the prosecution of the inmate took place.

(b) Whenever a person is or has been committed under several convictions, with separate sentences, such sentences shall be construed under Section 5-8-4 in granting and forfeiting of good time.

(c) The Department shall prescribe rules and regulations for revoking good conduct credit, or suspending or reducing the rate of accumulation thereof for specific rule violations, during imprisonment. Such rules and regulations shall provide that:

(1) Good conduct credits previously earned shall accumulate on a monthly basis.

(2) No inmate may be penalized more than one year of good conduct credit for any one infraction.

When the Department seeks to revoke, suspend or reduce the rate of accumulation of any good conduct credits for an alleged infraction of its rules, it shall bring charges therefor against the prisoner sought to be so deprived of good conduct credits before the Prisoner Review Board

as provided in subparagraph (a)(4) of Section 3-3-2 of this Code, if the amount of credit at issue exceeds 30 days or when during any 12 month period, the cumulative amount of credit revoked exceeds 30 days except where the infraction is committed or discovered within 60 days of scheduled release. In such cases, the Department of Corrections may revoke up to 30 days of good conduct credit. The Board may subsequently approve the revocation of additional good conduct credit, if the Department seeks to revoke good conduct credit in excess of thirty days. However, the Board shall not be empowered to review the Department's decision with respect to the loss of 30 days of good conduct credit within any calendar year for any prisoner or to increase any penalty beyond the length requested by the Department.

The Director of the Department of Corrections, in appropriate cases, may restore up to 30 days good conduct credits which have been revoked, suspended or reduced. Any restoration of good conduct credits in excess of 30 days shall be subject to review by the Prisoner Review Board. However, the Board may not restore good conduct credit in excess of the amount requested by the Director.

Nothing contained in this Section shall prohibit the Prisoner Review Board from ordering, pursuant to Section 3-3-9(a)(3)(i)(B), that a prisoner serve up to one year of the sentence imposed by the court which was not served due to the accumulation of good conduct credit.

(Source: P.A. 86-1090; 86-1373; 87-435.)

* * * * *

Section 99. This Act takes effect upon becoming law.
Passed in the General Assembly July 12, 1993.
Approved August 11, 1993.
Effective August 11, 1993.

1993 Ill. Laws 2604-19

PUBLIC ACT 86-1373
(House Bill No. 3167)

AN ACT to amend the Unified Code of Corrections by changing Section 3-6-3.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. The Unified Code of Corrections is amended by changing Section 3-6-3 as follows:

(Ch. 38, par. 1003-6-3)

Sec. 3-6-3. Rules and Regulations for Early Release.) (a)(1) The Department of Corrections shall prescribe rules and regulations for the early release on account of good conduct of persons committed to the Department which shall be subject to review by the Prisoner Review Board.

(2) Such rules and regulations shall provide that the prisoner shall receive one day of good conduct credit for each day of service in prison other than where a sentence of "natural life" has been imposed. Each day of good conduct credit shall reduce by one day the inmate's period of incarceration set by the court.

(3) Such rules and regulations shall also provide that the Director may award up to 90 days additional good conduct credit for meritorious service in specific instances as the Director deems proper.

(4) Such rules and regulations shall also provide that the good conduct credit accumulated and retained under paragraph (2) of subsection (a) of this Section by any inmate during specific periods of time in which such inmate is engaged full-time in educational programs provided by the Department under this paragraph (4) and achieves a goal of improved literacy or has satisfactorily completed other academic or vocational training programs provided by the Department as determined by the standards of the Department of Corrections School District, shall be multiplied by a factor of 1.25. However, no inmate shall be eligible for the additional good conduct credit under this paragraph (4), if convicted of first degree murder, second degree murder, or a Class X felony. No inmate shall be

eligible for the additional good conduct credit under this paragraph (4) if such inmate has engaged in the educational, academic or vocational training programs provided by the Department under this paragraph (4) and has subsequently been convicted of a felony. Educational programs under which good conduct credit may be increased through the achievement of academic goals shall be provided by the Department on the basis of documented professional standards and shall be made available to any inmate seeking admission to such programs within the limits of fiscal resources appropriated by the General Assembly for such purpose. Eligible inmates who are denied immediate admission shall be placed on a waiting list under criteria established by the Department. The inability of any inmate to become engaged in any such educational program by reason of insufficient program resources or for any other reason established under the rules and regulations of the Department shall not be deemed a cause of action under which the Department or any employee or agent of the Department shall be liable for damages to the inmate.

(5) Whenever the Department is to release any inmate earlier than it otherwise would because of a grant of good conduct credit for meritorious service given at any time during the term, the Department shall give reasonable advance notice of such impending release to the State's attorney of the county where the prosecution of the inmate took place.

(b) Whenever a person is or has been committed under several convictions, with separate sentences, such sentences shall be construed under Section 5-8-4 in granting and forfeiting of good time.

(c) The Department shall prescribe rules and regulations for revoking good conduct credit, or suspending or reducing the rate of accumulation thereof for specific rule violations, during imprisonment. Such rules and regulations shall provide that:

(1) good conduct credits previously earned shall accumulate on a monthly basis.

(2) no inmate may be penalized more than one year of good conduct credit for any one infraction.

When the Department seeks to revoke, suspend or reduce the rate of accumulation of any good conduct credits for an alleged infraction of its rules, it shall bring charges therefor against the prisoner sought to be so deprived of good conduct credits before the Prisoner Review Board as provided in subparagraph (a)(4) of Section 3-3-2 of this Code, if the amount of credit at issue exceeds 30 days or when during any 12 month period, the cumulative amount of credit revoked exceeds 30 days except where the infraction is committed or discovered within 60 days of scheduled release. In such cases, the Department of Corrections may revoke up to 30 days of good conduct credit. The Board may subsequently approve the revocation of additional good conduct credit, if the Department seeks to revoke good conduct credit in excess of thirty days. However, the Board shall not be empowered to review the Department's decision with respect to the loss of 30 days of good conduct credit within any calendar year for any prisoner or to increase any penalty beyond the length requested by the Department.

(3) The Director of the Department of Corrections, in appropriate cases, may restore up to 30 days good conduct credits which have been revoked, suspended or reduced. Any restoration of good conduct credits in excess of 30 days shall be subject to review by the Prisoner Review Board. However, the Board may not restore good conduct credit in excess of the amount requested by the Director.

(4) Nothing contained in this Section shall prohibit the Prisoner Review Board from ordering, pursuant to Section 3-3-9(a)(3)(i)(B), that a prisoner serve up to one year of the sentence imposed by the court which was not served due to the accumulation of good conduct credit.

(Source: P.A. 83-1362.)

Section 2. This Act takes effect upon becoming law.
Passed in the General Assembly June 26, 1990.
Approved September 10, 1990.
Effective September 10, 1990.

1990 Ill. Laws 2844-45

ILLINOIS REGISTER
DEPARTMENT OF CORRECTIONS
NOTICE OF ADOPTED AMENDMENT

Section 107.145 Educational Good Conduct Credits

Committed persons who are enrolled in full-time vocational or academic educational programs approved by the Department may be eligible to receive educational good conduct credits in addition to good conduct credits awarded in accordance with this Part. Educational good conduct credits shall be awarded at the rate of .25 days for each day during which educational goals have been achieved in accordance with 20 Ill. Adm. Code 405.

(Source: Added at 15 Ill. Reg. 5638, effective April 15, 1991)

15 Ill. Reg. 5641

Section 405.20 Adult and Juvenile
Educational Programs

a) The opportunity for educational programs shall be available in the Adult and Juvenile Divisions through the Department of Corrections School District #428. Nothing in this Part shall be construed to require educational opportunities for all committed persons.

1) Adult Division educational programs shall include:

A) Adult basic education and General Educational Development (G.E.D.) training;

B) Special education;

C) Vocational education and career counseling; and

D) Post-secondary education where possible.

2) Juvenile Division educational programs shall include:

A) Basic education and G.E.D.;

B) High school credits;

C) Special education;

D) Vocational education; and

E) Post-secondary education where possible.

b) Committed persons shall, upon request, be considered for enrollment in an educational program for which they are eligible or placement on the waiting list for the program if one exists. Waiting lists shall be maintained in chronological order.

c) In determining eligibility for enrollment in educational programs the Department shall consider, among other factors, the committed person's composite scores on achievement tests, the safety and security of the facility or any person, staff recommendations, requirements for admission to specific programs, administrative concerns, and the committed person's institutional behavior, disciplinary record, educational record, projected release date, and medical and mental health status.

d) In the Adult Division, committed persons may be eligible to enroll in:

1) Adult Basic Education if they test below the 6.0 grade level.

2) G.E.D. training if they test at the 6.0 grade level or above and they do not have a verified GED certificate or a High School diploma.

3) Special education regardless of test scores.

4) School District #428 vocational education regardless of test scores.

5) College vocational programs if they test at the 6.0 grade level or above and the college policy permits admission.

6) Two-year college degree academic programs if they have a verified GED certificate or High School diploma.

7) Four-year college degree academic programs if they have a verified GED certificate or High School diploma, and they have 30 hours of college transfer credit.

e) In the Juvenile Division, committed persons may be eligible to enroll in:

1) Basic Education if they test below the 6.0 grade level.

2) G.E.D. Training if they test at the 6.0 grade level or above and they do not have a verified GED certificate or High School diploma.

3) High School credits if they test at the 6.0 grade level or above and they do not have a verified GED certificate or High School diploma.

4) Special Education regardless of test scores.

5) School District #428 vocational education if they test at the 3.0 grade level or above.

6) College vocational programs if they test at the 6.0 grade level or above and the college policy permits admission.

7) Two-year college academic programs if they have a verified GED certificate or High School diploma.

f) Committed persons shall be required to attend and actively participate in classes for which they are enrolled and shall be subject to discipline under 20 Ill. Adm. Code 504, unless absent due to verified illnesses, approved visits, court writs, furloughs, discipline, lockdowns, and other reasons approved by the Chief Administrative Officer. Active participation shall mean, but shall not be limited to, instances in which the committed person is attentive, responsive, and cooperative and completes assigned work.

g) Committed persons shall adhere to attendance requirements of the educational program in which they are enrolled:

1) Committed persons enrolled in non-college academic programs in the Adult and Juvenile Divisions shall be required to attend and to actively participate in the number of instructional days specified to complete the program and shall not be absent from the program or shall not be documented as not actively participating in the program for more than 30 instructional days, not including days absent due to lockdowns.

2) Persons committed in the Community Services Division and committed persons enrolled in college academic courses shall attend scheduled classes and shall not be absent more than allowed under the requirements of the educational provider or the correctional facility policy. Committed persons shall be advised of the specific requirements of the program in which they are enrolled.

h) Committed persons may be removed from educational programs due to:

1) Disciplinary action.

2) Failure to adhere to attendance requirements.

3) Administrative reasons approved by the Educational Administrator or the Chief Administrative Officer including, but not limited to, disruptive behavior, lack of active participation, termination or suspension of the program, and safety and security reasons.

4) The committed person's transfer to another facility or program.

(Source: Amended at 15 Ill. Reg. 5642, effective April 15, 1991)

15 Ill. Reg. 5646-49

Section 405.55 Educational Good Conduct Credits

a) Committed persons who enroll full-time in an academic or vocational education program approved by the Department shall be eligible to receive educational good conduct credits provided:

1) They are eligible to receive good time in accordance with 20 Ill. Adm. Code 107, Subpart B;

2) They have not been convicted of first degree murder, second degree murder, or a Class X felony;

3) They have not been convicted of a felony which was committed after a previous award of educational good conduct credits; and

4) They achieve the educational goals established by the Department within a specified time period.

b) Goals shall be established in writing for committed persons who are eligible to receive educational good conduct credits and shall be signed by the committed person. The goal statement shall include the goal period, attendance requirements, and the educational goals the committed person is expected to achieve.

c) The goal period for persons committed in the Adult and Juvenile Divisions who are enrolled in any program except college academic programs shall be 90 instructional days of attendance or the number of instructional days of attendance required to complete the program if less than 90 instructional days.

d) The goal period for persons committed in the Adult and Juvenile Divisions who are enrolled in college academic programs and for persons committed in the Community Services Division shall be the period of time during which the classes are scheduled.

e) Educational goals shall be determined based on the committed person's current level of achievement and ability. Educational goals may include, but not be limited to, one or more of the following factors:

1) Achievement of a specified grade level;

2) Attainment of a GED certificate;

3) Attainment of a specific number of high school or college credits;

4) Achievement of specified skills; and/or

5) Maintaining a grade of "C" or better in each class or maintaining a passing grade where a pass/fail grading system is used.

f) Educational goals may, with the approval of the Educational Administrator or the Chief Administrative Officer, be revised in writing and signed by the committed person if it is determined that the original educational goals need to be revised based, among other matters, on a reassessment of the committed person's level of competency or ability. However, the goal period may not be changed.

g) When a committed person completes the educational program early, the goal period shall be revised to the date of completion and the committed person shall be eligible to receive educational good conduct credits for the revised goal period.

h) Committed persons may be removed from the educational program in accordance with Section 405.20(h).

1) If the committed person is removed from the educational program due to placement in protective custody, non-voluntary transfers for other than disciplinary reasons, termination or suspension of the educational program by the Department, release on parole or mandatory supervised release, or other reasons approved by the Chief Administrative Officer, the goal period may be revised to the date removed from the program. In determining whether to revise a goal period, the Department shall consider, among other factors, the committed person's medical and mental health status, protection needs, projected

release date, and time in the program. The committed person may be eligible to receive educational good conduct credits for the revised goal period provided satisfactory progress has been made towards achieving stated goals.

2) If the committed person is removed from the educational program prior to program completion due to reasons other than those stated in subsection (h)(1) of this Section, the committed person shall not receive any educational good conduct credit for participation in the educational program.

i) Within 15 working days, whenever feasible, of completion of the goal period or removal from the program, the Educational Administrator or Chief Administrative Officer shall:

1) Determine whether or not the committed person achieved the stated educational goals, complied with attendance requirements, or was making satisfactory progress toward achieving such goals in accordance with subsection (h)(1) of this Section.

2) Document the number of days, if any, for which the committed person is eligible to receive educational good conduct credits. This shall be the number of calendar days during the goal period, less days absent and days not attended due to lockdowns or class cancellations.

3) Document the reasons for ineligibility for award of educational good conduct credits.

4) Ensure educational good conduct credits are computed at the rate of .25 of the number of days eligible for such award.

j) The award of educational good conduct credits shall be subject to the review and approval of the Director. A copy of the award of educational good conduct credits shall be filed in the committed person's master record file.

k) Committed persons shall be advised in writing of the award of educational good conduct credits or the reasons for ineligibility of the award.

l) Committed persons may grieve the establishment of goals or the decision not to award educational good conduct credits under 20 Ill. Adm. Code 504, Subpart F.

m) New goal periods and goals shall be established upon re-enrollment.

(Source: Added at 15 Ill. Reg. 5642, effective April 15, 1991)

15 Ill. Reg. 5651-54

Section 405.70 Suspension of Programs

Unless otherwise provided by law, any of the provisions of this Part may be suspended by the Director for reasons including, but not limited to, safety and security, budgetary constraints, insufficient program resources, inadequate space or unavailability of educational staff.

(Source: Amended at 15 Ill. Reg. 5642, effective April 15, 1991)

15 Ill. Reg. 5655

STATE OF ILLINOIS
88TH GENERAL ASSEMBLY
REGULAR SESSION
SENATE TRANSCRIPT

FIRST PROOF

35th Legislative Day April 16, 1993

PRESIDING OFFICER: (SENATOR WEAVER)

Senator Hawkinson? Read the bill, Madam Secretary. 956.

ACTING SECRETARY HAWKER:

Senate Bill 956.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR WEAVER)

Senator Hawkinson.

SENATOR HAWKINSON.

Thank you, Mr. President. This is the Senate Judiciary Committee bill encompassing some of the recommendations of the Governor's Task Force on Crime and Corrections. It was my privilege, along with Senator Tom Dunn to serve on that commission under the leadership of former U.S. Attorney Anton Valukas, represented by law enforcement officers and a board spectrum of—of corrections and community folks. Unless something is done, our prison capacity, including our recently opened prison and the boot camps, will be at the total maximum and prisoners would have to start being released in July of 1994. This report contains many of the recommendations

of that Task Force, but not all of them. Some of the most important ones are not included here. Building a super max prison, which will enable us to control the most dangerous criminals and remove them from the ordinary prison system, is not in here. About six years ago, this Body passed a Community Corrections Act, which would allow our—our courts the full broad range of—of sentences, but we only funded it for a quarter of a year. One of the best recommendations of the Task Force is that that be fully funded so that the early offenders and young offenders can be dealt with before they reach prison stage. We also recommend some bed expansion and construction in East St. Louis. But none of those things are in this bill. This—this bill deals with a few of the recommendations. It expands the impact incarceration, or the boot camp eligibility. It expands the earned time. It does not include the worst of our offenders. Although the recommendation was to include some Class X, this bill does not include Class X offenders for the increased earned time. We have a waiting list of some four thousand inmates who are currently eligible, under our current laws, for your educational programs, but they're not able to get in because we're not funding. And although it's not in this bill, it's recommended that we spend an additional seven million dollars this year to expand those programs, because the evidence has shown from this State and other states that, first of all, some forty percent of our inmates are recidivists. That means they've been in before. They get out, and within a short time, they're back in again. But the—and that—those folks really constitute a menace to our citizens. The evidence has shown that if, while in prison, they get a degree, they get some education, they learn a skill through correctional industries or they get drug and alcohol treatment, that they tend not to recidivate at as high a rate. And if we can keep those folks from

getting back into crime when they get out, that is helpful. Because we have a waiting list of four thousand, I considered, and the Judiciary Committee did not expand the list of eligibles to include Class X, and I'm opposed to including those; but, for those who do qualify, I think we ought to have the programs available, and we ought to cut back on recidivism. I'd be happy to answer any questions; otherwise, I would strongly urge the adoption of Senate Bill 956.

PRESIDING OFFICER: (SENATOR WEAVER)

Is there discussion? Senator Cullerton.

SENATOR CULLERTON:

Yes. I also rise in support of the bill. As Senator Hawkinson has pointed out, we are very close to having the federal courts run our prison system. That is, by the way, the case in Cook County. I don't know if people realize that, but in Cook County, the Cook County jail is run by a federal judge. And when judges set bonds, some bureaucrat might release that person out into the streets, even though a judge set a bond and that person didn't make bond. That's because there's just not enough beds. We are—unless we do something about it, are going—are going to come to that point here in the—in the State. Now this bill, and these recommendations, are going to cost some money. It's going to be about seven or eight million dollars, and I would hope that when we do the budget, that we do certainly include that money, because in the long run, it's going to be saving money. There's probably about seventy-five hundred inmates that, as a result of this bill, will be—not have to go into the overcrowded prisons, but rather, their incarceration might be in a boot camp or with other type of restraints, other than having to send them to—to jail. So it's important that we

do this, and it's important that we understand, every time we keep on raising penalties, that we have to—there's a cost associated with that. Unless we're willing to pay that cost, we're going to end up having—turning over our—our prison system to some federal judge. So I think it's a—it's—it was a very fine effort on behalf of the members of the Task Force. We ought to support the bill, but keep in mind that it might cost some money.

PRESIDING OFFICER: (SENATOR WEAVER)

Senator del Valle. Senator del Valle?

SENATOR dEL VALLE:

Thank you, Mr. President. Senator Hawkinson, I commend the Task Force. I think many of the recommendations are certainly long overdue, but I'm concened about how we're going to generate the additional funds to be able to—to provide enough opportunities for people to participate in the educational programs and in the substance abuse program. This bill increases the weighted good time for individuals who participate. But my understanding is, for example, in the prison industries program, that there are about eighteen hundred participants in that program. Is that correct?

PRESIDING OFFICER: (SENATOR WEAVER)

Senator Hawkinson.

SENATOR HAWKINSON:

Yes. Do you want me to answer your question now, or do you have more of it before I go on?

PRESIDING OFFICER: (SENATOR WEAVER)

Senator Hawkinson.

SENATOR HAWKINSON:

I think the Senator raises a—a extremely important point. First, technically, this bill does not mandate the inclusion unless the funds are available. But Senator Cullerton touched on that this is going to cost money; it's going to cost some seven or eight million dollars in this year to expand these programs. The alternatives, however, are much more expensive. To build each prison is a fifty-five-/sixty-million-dollar proposition to house some nine hundred inmates. Now, we're going to have to build some more, but we can't build our way out of it completely. If we increase the educational programs, the drug abuse programs, the correctional industries programs, which was at issue in another bill yesterday, but something the Task Force feels that we desperately need to do, so—we can give jobs to some of these people on the outside. And the reason we do that is so that they will not prey upon our citizens and create new victims of crimes once they get out and, therefore, have to be returned to prison. But this will not be inexpensive. I mentioned in my opening remarks that we desperately need to fund the community corrections program. That will be expensive; it will take dollars. This is not cheap, but there is no cheap answer to the problem of crime in Illinois or crime in America. We have to either put the money in—in ever-expanding prisons—and I favor building them as we need them, and I've supported them in the past. But we need to put them in programs, and we're going to have to face up to that. Now, this bill doesn't contain the funding. That'll have to come in the budget, Senator, but I will support that funding because we have to do it in order to deal with the problem—to deal with the problem of crime in Illinois.

PRESIDING OFFICER: (SENATOR WATSON)

Senator del Valle.

SENATOR dEL VALLE:

Again, for—for clarification. Your projection is that an additional eight—seven to eight million dollars will be needed to expand the education, substance abuse programs and for electronic detention and the boot camp programs. A total of seven to eight million dollars for all these areas will be needed?

PRESIDING OFFICER: (SENATOR WEAVER)

Senator Hawkinson.

SENATOR HAWKINSON:

The expense to expand the programs to the degree necessary is seven to eight million dollars. The Department advises me that the net cost after the savings, because of the additional beds saved, will be four million dollars this year.

PRESIDING OFFICER: (SENATOR WEAVER)

Senator del Valle.

SENATOR dEL VALLE:

Well, based on the—on the growth of the inmate population, I—I don't see how they could project a savings, because that population is going to continue to increase.

PRESIDING OFFICER: (SENATOR WEAVER)

Senator Hawkinson.

SENATOR HAWKINSON:

Well, I think you raised a good point, Senator. I think seven or eight million is probably close, but the Depart-

ment estimates some cost savings of four million. As we refill these beds, I'm not sure where those cost savings will come from. But you're—you're on target. It is going to cost money, but I think it will cost less money than the alternative.

PRESIDING OFFICER: (SENATOR WEAVER)

Senator Dunn.

SENATOR R. DUNN:

Thank you, Mr. President. I hate to interrupt a good debate, but I'd like a point of personal privilege, please.

PRESIDING OFFICER: (SENATOR WEAVER)

State your point.

SENATOR R. DUNN:

I have a group from Evansville, Illinois. The eighth grade in the gallery behind me here—thirty-three of them—and they've been up and been listening now for the debate, and let's welcome them to the Legislature.

PRESIDING OFFICER: (SENATOR WEAVER)

Will our guests in the gallery please rise? And welcome to Springfield, Senator Demuzio.

SENATOR DEMUZIO:

Well, thank you, Mr. President. Let me—I, too, rise to—to support this—this measure, and I only disagree with one thing that you've said, Senator Hawkinson. You—you indicated that we might be able to spend our way out of this. I don't think we're going to be able to spend our way out of this, and this thing. . . I probably have more prisoners incarcerated in my district, because of the fact of the number of prisons that I have in my district.

And I think electronic detention and some of the things that are other aspects in this bill, I think, are absolutely necessary, and I would rise to support this bill in its—in its total.

PRESIDING OFFICER: (SENATOR WEAVER)

Senator Stern.

SENATOR STERN:

Mr. President and Members of the Senate, I don't think you need an additional support voice, but I think this is genuinely constructive legislation and precisely the kind of thing that we should be laying our emphasis on. We know these things work, and we should all be voting Yes on this. It's not a crisis that we're responding to, as we often are; this is constructive, long-range possible solutions to intransigent problems. Thank you.

PRESIDING OFFICER: (SENATOR WEAVER)

Senator Fawell.

SENATOR FAWELL:

Thank you very much. Five years ago, four years ago, three years ago, and two years ago, I introduced a bill which gave good time for going to school and trying to educate these prisoners. It's nice to see that the—the rest of the Assembly has finally come around. It is true; about eighty-seven percent of our prisoners are functionally illiterate when they go into prison. If we don't start educating them, they're just going to turn right around. I—this is a good bill.

PRESIDING OFFICER: (SENATOR WEAVER)

Any further discussion? Senator Rea.

SENATOR REA:

Thank you, Mr. President. I just want to say that I think that with the serious problems that we have within our correctional facilities, I'm very pleased with the recommendations that have come back from the Task Force, and I feel that we should move as—as early as possible in the implementation of most of those recommendations. I think this bill addresses many of those concerns and certainly support it.

PRESIDING OFFICER: (SENATOR WEAVER)

Senator Butler.

SENATOR BUTLER:

Thank you, Mr. President. I, too, support this, but I want to add a word of caution. I had a long conversation with a downstate judge over the weekend, and they are—there is apparent growing concern about good time and its net effect on the attitude of—of potential criminals; that is, he was saying he could sentence somebody to a year and they're out in fifty-nine days. And of course, that's—that same kind of mathematics works as the—as the sentence expands. The point is that I hope the Judiciary Committee takes a really good look at—at—at good time to make sure we're not going overboard and we're creating a negative attitude on the part of potential—let's call them potential prisoners.

PRESIDING OFFICER: (SENATOR WEAVER)

Senator Hawkinson, to close.

SENATOR HAWKINSON:

Well, first, let me respond to a couple of comments. If I did, I certainly didn't intend to say we could spend our way out of this. It's going to be a very expensive propo-

sition. We cannot build our way out. I did indicate I think we probably are going to have to build some more, however. But that's not in this bill either, although we do recommend as part of the Task Force a super max prison and some additional construction. Senator Butler, I share your concerns on good time. As a matter of fact, I think eventually we ought to move to do away for all—with all the day-to-day good time that's given out automatically and replace it completely with an earned time concept; that you have to earn it by getting an education or getting your drug abuse training or getting a skill through correctional industries. We balanced it in this report by not allowing the most serious offenders to get this new good time. The Class X offenders—your robbers, your rapists—they are not eligible. And this bill does not make them eligible for that kind of good time. But the evidence has shown that for those who we've already made eligible, that if they get the education, if they get the skill, they are less likely to be back within a year having committed another crime upon our citizens. And that's why it is recommended in this Task Force. I think it's important that we pass this part of the package, and I would urge your Aye vote.

PRESIDING OFFICER: (SENATOR WEAVER)

The question is, shall Senate Bill 956 pass. Those in favor will vote Aye. Those opposed will vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Take the record, Madam Secretary. On that question, the Ayes are 53, the Nays are 1, none voting Present. Senate Bill 956, having received the constitutional majority, is declared passed.